IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3134 OF 2006.

Jitendra Ghanshyam Dube,
Age: 36, Occ.: Builder,
R/at Sai Construction Co.,
4, Rahul Paradise, Sainagar,
Mahim Road, Palghar, Taluka:
Palghar, Dist. Thane. ... Applicant.

Versus.

1. Nariman S.Nagpurwala,
Age: 75, Occ.: Business,
R/at: At Post Kurgaon,
Tal: Palghar, Dist. Thane.

2. The State of Maharashtra. ... Respondents.

Shri Prem Sagar i/by Shri Indrajeet Joshi for the Applicant.

Shri Shailesh Kantharia for the Respondent No.1.

Shri Rajesh More, A.P.P. for the Respondent no.2-State.

CORAM : ABHAY S.OKA, J.

DATED : 18th September, 2006.

ORAL JUDGMENT.:

1. Rule. Rule is made returnable forthwith. The Advocate for the 1st Respondent waives service. The learned A.P.P. waives service for the 2nd Respondent.

Taken up for hearing forthwith.

2. The prayer in this Application under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code) is for quashing the F.I.R. A private complaint was filed by the 1st Respondent

against the Applicant alleging commission of offenceS under section 467, 468, 471, and 420 of the Indian Penal Code. On the said complaint an order was passed under section 156(3) of the said Code on the basis of which F.I.R. was registered against the Applicant. It appears that regarding the subject matter of the said complaint, a civil suit was also filed between the parties which has how ended in a compromise decree.

3. A true copy of the consent terms and a true copy of the order passed by the Civil Court on the consent terms have been annexed to the Application. This Court while passing the order dated 17th August 2006 in Criminal Application No.2985 of 2006 has taken a note of the settlement between the parties.

4. There is an affidavit filed by the 1st Respondent in this Application. Paragraphs 3, and 7 to 10 of the said affidavit read thus:

> "3. I know the applicant since last two years. In fact I have cordial relations with the applicant, who wanted to start a school. The applicant had promised me that he wold purchase Plot No.12 for School purpose as the said plot is reserved for School/hospital. The applicant, may be due to certain genuine problems could not purchase the said plot within

a year as promised. I had therefore told him to vacate my premises or in the alternative to purchase the said plot though lately. But he did not do so.

7. The applicant after some days approached me and showed his willingness to settle the dispute amicably. As I felt that his desire to compromise the matter came out from the within of his heart, my conscience felt that I should settle the matter.

8. Accordingly the civil dispute, which was the very basis of the criminal complaint, was compromised amicably between us whereby the applicant paid me monetary compensation as detailed in the compromise purshis.

9. I am 77 years of age. I am an old person. I feel that my property is now secure in my hands. As such there remains no dispute between myself and the applicant who I believe will pursue the path of virtue.

10. With this I request the Hon'ble Court to adopt a reformative approach in respect of the applicant and pass appropriate order in the interest of justice."

The learned Advocate for the Respondent No.1 stated that considering the fact that a settlement is arrived at between the parties in the civil suit, the first Respondent has no objection if the prayer for quashing is granted.

5. After having heard the learned Advocates for the parties and after perusing the relevant material on record including the affidavit-in-reply filed by the 1st Respondent, I find that the continuation of the criminal proceedings will cause harassment to both the parties. In view of the overall settlement between the parties, no purpose will be served by continuation of the criminal proceedings. Hence a case is made out for exercising power under section 482 of the Code of Criminal Procedure, 1973.

6. Rule is made absolute in terms of prayer clause (a).

Judge.